



Civil Resolution Tribunal

Date Issued: May 5, 2022

File: ST-2021-008281

Type: Strata

Civil Resolution Tribunal

Indexed as: *Therrien Investments Ltd. v. The Owners, Strata Plan VIS7041*,
2022 BCCRT 538

B E T W E E N :

THERRIEN INVESTMENTS LTD.

APPLICANT

A N D :

The Owners, Strata Plan VIS7041

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about repair and maintenance of 9 condensing units. The applicant, Therrien Investments Ltd. (Therrien), owns strata lot 1 (SL1) in the respondent strata corporation, The Owners, Strata Plan VIS7041 (strata). Therrien says the condensing units are common property that the strata must repair and maintain under the *Strata*

Property Act (SPA). Therrien says the strata has failed to meet its obligations, and seeks an order for the strata to repair, maintain, and replace the condensing units, as necessary.

2. The strata disagrees. It says the condensing units are common assets that it may dispose of under SPA section 82(2). It says it does not need to repair or maintain the condensing units because it is investigating disposal of them.
3. Therrien's director, Ms. Sylvia Therrien, represents it. A strata council member represents the strata.
4. For the reasons that follow, I dismiss the Therrien's claims.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act (CRTA)*. CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
6. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

8. Under CRTA section 123, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

ISSUE

9. The issue in this dispute is whether the strata breached any obligation to repair or maintain the 9 condensing units, and if so, what remedy is appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Therrien as the applicant must prove its claims on a balance of probabilities. This means more likely than not. I have read all the parties' evidence and submissions, including case law, but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. As noted above, Therrien is the owner of SL1. It is referred to as the commercial lot in the strata's bylaws. The strata registered a complete set of the bylaws in the Land Title Office in July 2015. There are registered amendments, but I find these are not relevant to this dispute.
12. There are no specific bylaws about the condensing units. However, under bylaw 9, the strata must repair and maintain the strata's common assets and common property that is not designated as limited common property, among other things.
13. It is undisputed that the 9 condensing units service SL1. Architectural drawings show they are located in the underground parkade in 2 separate areas. The condensing units do not appear on the strata plan, but I find it clear that are located in the common property parkade. Therrien's photographs showing that the units are in 2 groups, numbering 4 and 5 respectively, and located behind a chain-link fence in the parkade.
14. As noted above, the parties disagree on whether the condensing units are common property or common assets. In the Dispute Notice Therrien previously characterized

the condensing units as common assets but now says they are common property. I discuss this issue in further detail below.

15. In an October 7, 2021 letter, Therrien requested a strata council hearing about the condensing units. As outlined in the letter, Therrien alleged that the strata had stopped maintaining the condensing units and refused requests to service them.
16. The strata held the hearing on October 19, 2021. As stated in an October 22, 2021 decision letter, the strata decided that it did not need to repair the condensing units unless they were common property. The strata found that the condensing units were instead common assets. It said it would further investigate the “degree of affixation” of the condensing units. There is no indication that the strata further investigated the matter or changed its mind.

Did the strata breach any obligation to repair or maintain the 9 condensing units?

17. Under SPA sections 3 and 72 and bylaw 9, the strata must repair and maintain common property and assets. The parties disagree on whether the condensing units are common property or common assets. I find little turns on this in this dispute. This is because, regardless of whether they are common property or common assets, the strata must repair and maintain them under both the SPA and the bylaws.
18. The strata says that the condensing units are common assets and not common property, and the strata is considering disposing of them under SPA section 82. For the reasons that follow, I find it unnecessary to make any findings about this issue.
19. SPA section 82(2) allows a strata corporation to sell or otherwise dispose of personal property. SPA section 1(1) defines a common asset to include personal property held by or on behalf of the strata. However, SPA section 82(3) says the strata corporation must obtain prior approval by a resolution passed by a 3/4 vote at an annual or special general meeting if the personal property has a market value of more than an amount set out in the bylaws, or \$1,000, if the bylaws are silent as to the amount.

20. There is no indication that the strata has taken any steps to remove the condensing units. For example, the strata provided no evidence that the strata council had decided to do so, or whether it was required or had taken any steps to obtain owner approval under SPA section 82(3). The strata did not counterclaim for any orders about disposing of the condensing units. So, I find it unnecessary to determine if the condensing units are common property or common assets, or whether the strata can dispose of them under SPA section 82(3).
21. Further, to the extent that the strata wishes a determination on whether it may dispose of the condensing units under SPA section 82(3), I find it would be inappropriate to do so. This is because the CRT generally does not provide legal advice or make prospective orders about future events that have not happened yet. So, I decline to make such an order in this dispute.
22. In summary, I find the strata must repair and maintain the condensing units as either common property or as common assets. The difficulty with Therrien's claim is that there is no evidence that the condensing units have fallen into disrepair. There is no evidence they have ceased functioning or what repairs or maintenance might be necessary. For example, Therrien did not describe any mechanical difficulties affecting the units in its October 7, 2021 letter to the strata.
23. Given the above, I find it unproven that the strata breached its obligation to repair and maintain the condensing units. Further, I find that ordering the strata to repair and maintain the condensing units would serve no meaningful purpose as the strata must already do so. It follows that I must dismiss Therrien's claims.

CRT FEES AND EXPENSES

24. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule.
25. While I have found that the strata is obligated to repair and maintain the condensing units, I have dismissed Therrien's substantive claims. So, I dismiss Therrien's claims

for reimbursement, including for CRT fees. The parties did not claim for any specific dispute-related expenses.

26. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Therrien.

ORDER

27. I dismiss Therrien's claims and this dispute.

David Jiang, Tribunal Member